Melendez-Diaz v. Mass, 557 U.S. 305 (2009)

- M-D tried on charges alleging that he distributed cocaine and trafficked in cocaine
- Prosecution offered certificates signed by state laboratory analysts stating that evidence was cocaine
- 6th Amend objection -- the objection overruled
- State court affirms
- Held: Certificates were affidavits, which fell within the core class of testimonial statements and were made under circumstances which would have led an objective witness reasonably to believe that they were made for use in a criminal trial. Although petitioner could have subpoenaed the analysts, that right was not a substitute for his right to confront them.

Melendez-Diaz (cont)

- 5-4 Ruling (Scalia for majority)
- Rejects argument that analysts are not “accusatory witnesses”
  Rejects argument that witnesses who testify regarding facts other than those observed at the crime scene are exempt from confrontation
- Absence of interrogation irrelevant; volunteers = witnesses
- Neutral scientific testing is not immune from confrontation
- Confrontation is not relaxed if it makes the prosecution's task burdensome.
- Some states already make this work
- Kennedy dissents, jointed by Roberts, Breyer and Alito

Melendez-Diaz (cont)

- “Contrary to the dissent’s suggestion, we do not hold, and it is not the case, that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution’s case. While the dissent is correct that it is the obligation of the prosecution to establish the chain of custody, this does not mean that everyone who laid hands on the evidence must be called. . . .

Melendez-Diaz (cont)

- As stated in the dissent's own quotation from United States v. Lott, 854 F. 2d 244, 250 (CA7 1988), "gaps in the chain [of custody] normally go to the weight of the evidence rather than its admissibility." It is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence; but what testimony is introduced must (if the defendant objects) be introduced live. Additionally, documents prepared in the regular course of equipment maintenance may well qualify as nontestimonial."

Melendez-Diaz (cont)

- “Nor is it evident that what respondent calls “neutral scientific testing” is as neutral or as reliable as respondent suggests. Forensic evidence is not uniquely immune from the risk of manipulation. According to a recent study conducted under the auspices of the National Academy of Sciences, ‘t]he majority of [laboratories producing forensic evidence] are administered by law enforcement agencies, such as police departments, where the laboratory administrator reports to the head of the agency.’ National Research Council of the National Academies, Strengthening Forensic Science in the United States: A Path Forward 6-1 (Prepublication Copy Feb. 2009) (hereinafter National Academy Report). . . .

Melendez-Diaz (cont)

- “And ‘[b]ecause forensic scientists often are driven in their work by a need to answer a particular question related to the issues of a particular case, they sometimes face pressure to sacrifice appropriate methodology for the sake of expediency.’ Id., at S-17. A forensic analyst responding to a request from a law enforcement official may feel pressure — or have an incentive — to alter the evidence in a manner favorable to the prosecution.”

Melendez-Diaz (cont)

- “Like expert witnesses generally, an analyst’s lack of proper training or deficiency in judgment may be disclosed in cross-examination.
- “This case is illustrative. The affidavits submitted by the analysts contained only the bare-bones statement that “[t]he substance was found to contain: Cocaine.” At the time of trial, petitioner did not know what tests the analysts performed, whether those tests were routine, and whether interpreting their results required the exercise of judgment or the use of skills that the analysts may not have possessed.”

Melendez-Diaz (cont)

- “While we still do not know the precise tests used by the analysts, we are told that the laboratories use ‘methodology recommended by the Scientific Working Group for the Analysis of Seized Drugs.’ At least some of that methodology requires the exercise of judgment and presents a risk of error that might be explored on cross-examination.”

Melendez-Diaz (cont)

- "Documents kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status. See Fed. Rule Evid. 803(6). But that is not the case if the regularly conducted business activity is the production of evidence for use at trial. Our decision in *Palmer v. Hoffman,* 318 U. S. 109 (1943), made that distinction clear. There we held that an accident report provided by an employee of a railroad company did not qualify as a business record because, although kept in the regular course of the railroad's operations, it was 'calculated for use essentially in the court, not in the business."

Melendez-Diaz (cont)

- “The dissent identifies a single class of evidence which, though prepared for use at trial, was traditionally admissible: a clerk’s certificate authenticating an official record -or a copy thereof - for use as evidence. But a clerk’s authority in that regard was narrowly circumscribed. He was permitted ‘to certify to the correctness of a copy of a record kept in his office,’ but had ‘no authority to furnish, as evidence for the trial of a lawsuit, his interpretation of what the record contains or shows, or to certify to its substance or effect.’ *State v. Wilson,* 141 La. 404, 409, 75 So. 95, 97 (1917).”

Melendez-Diaz (cont)

- “The dissent suggests that the fact that this exception was narrowly circumscribed makes no difference. To the contrary, it makes all the difference in the world. It shows that even the line of cases establishing the one narrow exception the dissent has been able to identify simultaneously vindicates the general rule applicable to the present case. A clerk could by affidavit *authenticate* or provide a copy of an otherwise admissible record, but could not do what the analysts did here: *create* a record for the sole purpose of providing evidence against a defendant.”

Melendez-Diaz (cont) – Justice Kennedy's Dissent

- "The Court sweeps away an accepted rule governing the admission of scientific evidence. Until today, scientific analysis could be introduced into evidence without testimony from the 'analyst' who produced it. This rule has been established for at least 90 years. It extends across at least 35 States and six Federal Courts of Appeals. Yet the Court undoes it based on two recent opinions that say nothing about forensic analysts: *Crawford v. Washington,* 541 U. S. 36 (2004), and *Davis v. Washington,* 547 U. S. 813 (2006)."

Melendez-Diaz (cont) – Justice Kennedy's Disssent

- "It is remarkable that the Court so confidently disregards a century of jurisprudence. We learn now that we have misinterpreted the Confrontation Clause — hardly an arcane or seldom-used provision of the Constitution — for the first 218 years of its existence. The immediate systemic concern is that the Court makes no attempt to acknowledge the real differences between laboratory analysts who perform scientific tests and other, more conventional witnesses — 'witnesses' being the word the Framers used in the Confrontation Clause."

Melendez-Diaz (cont) – Justice Kennedy's Dissent

- "* * * There is no accepted definition of analyst, and there is no established precedent to define that term.
- "Consider how many people play a role in a routine test for the presence of illegal drugs. One person prepares a sample of the drug, places it in a testing machine, and retrieves the machine's printout — often, a graph showing the frequencies of radiation absorbed by the sample or the masses of the sample's molecular fragments. * * * A second person interprets the graph the machine prints out-perhaps by comparing that printout with published, standardized graphs of known drugs. Meanwhile, a third person — perhaps an independent contractor — has calibrated the machine and, having done so, has certified that the machine is in good working order. Finally, a fourth person — perhaps the laboratory's director — certifies that his subordinates followed established procedures."

Melendez-Diaz (cont) – Justice Kennedy's Dissent

- "It is not at all evident which of these four persons is the analyst to be confronted under the rule the Court announces today. If all are witnesses who must appear for in-court confrontation, then the Court has, for all practical purposes, forbidden the use of scientific tests in criminal trials. * * * [R]equiring even one of these individuals to testify threatens to disrupt if not end many prosecutions where guilt is clear but a newly found formalism now holds sway.
- "It is possible to read the Court's opinion, however, to say that all four must testify. * * *
- "And each of the four has power to introduce error. * * *

Bullcoming v. New Mexico
131 S. Ct. 2705 (2011) (DWI Case)

- Court (Ginsburg) reaffirmed *Melendez-Diaz* and held further that the Confrontation Clause was not satisfied when such a certificate was entered into evidence through the testimony of a person who was not involved with and had no personal knowledge of the testing procedure.
- Bullcoming's blood sample was tested at N. Mex. Department of Health, Scientific Laboratory Division by a forensic analyst named Caylor, who completed, signed, and certified the report. Prosecution did not call Caylor to testify or assert he was unavailable

Bullcoming v. New Mexico (cont)

- Record showed only that Caylor was placed on unpaid leave for an undisclosed reason
- Pros. Called another analyst, Razatos, to validate the report. He was familiar with the testing device used to analyze Bullcoming's blood and with the laboratory's testing procedures, but had neither participated in nor observed the test on Bullcoming's blood sample

Bullcoming v. New Mexico (cont) (Sotomayor Concurring in Judgment)

- “First, this is not a case in which the State suggested an alternate purpose, much less an alternate primary purpose, for the BAC report. For example, the State has not claimed that the report was necessary to provide Bullcoming with medical treatment.”
- “Second, this is not a case in which the person testifying is a supervisor, reviewer, or someone else with a personal, albeit limited, connection to the scientific test at issue.”
- “Third, this is not a case in which an expert witness was asked for his independent opinion about underlying testimonial reports that were not themselves admitted into evidence.”
- “Finally, this is not a case in which the State introduced only machine-generated results, such as a printout from a gas chromatograph. The State here introduced Caylor's statements . . ..”

Bullcoming v. New Mexico (cont) (Kennedy Dissent)

- Justice Kennedy, joined by the Chief Justice and Justices Breyer and Alito, dissented in *Bullcoming* for essentially the same reasons that they dissented in *Melendez-Diaz.*
- “It is not even clear which witnesses' testimony could render a scientific report admissible under the Court's approach. Melendez-Diaz stated an inflexible rule: Where "analysts' affidavits" included "testimonial statements," defendants were "entitled to be confronted with the analysts" themselves. . . . Now, the Court reveals, this rule is either less clear than it first appeared or too strict to be followed. A report is admissible, today's opinion states, if a ‘live witness competent to testify to the truth of the statements made in the report’ appears. . . . Such witnesses include not just the certifying analyst, but also any ‘scientist who . . . perform[ed] or observe[d] the test reported in the certification.’”

Williams v. Illinois
132 S. Ct. 2221 (2012)

- Five days after deciding *Bullcoming*, the Court granted *certiorari* in this rape case
- Crucial proof of identity was evidence of a DNA match
- Sandra Lambatos, a forensic spe- cialist at the Illinois State Police lab, testified that she matched a DNA profile produced by an outside laboratory, Cellmark, to a profile the state lab produced using a sample of petitioner's blood. She testi- fied that Cellmark was an accredited laboratory and that business records showed that vaginal swabs taken from the victim, L. J., were sent to Cellmark and returned. She offered no other statement for the purpose of identifying the sample used for Cellmark's profile or establishing how Cellmark handled or tested the sample. Nor did she vouch for the accuracy of Cellmark's profile.

Williams v. Illinois (cont)

- The state supreme court distinguished *Melendez-Diaz* principally on the basis that the report was used as the basis for the opinion of the in-court witness as to the DNA match.
- The petitioner claimed that the substance of the report was presented to the trier of fact, and that it was used for the truth of what it asserted.

Williams v. Illinois (Alito with C.J. Roberts, Kennedy & Breyer)

- References to Cellmark in the trial record either were not hearsay or were not offered for the truth of the matter asserted.
- When Lambatos answered “yes” to a question about whether there was a match between the DNA profile “found in semen from the vaginal swabs of [L. J.]” and the one identified as petitioner’s, she simply assumed that the vaginal swabs were those of the victim.

Williams v. Illinois (Alito with C.J. Roberts, Kennedy & Breyer)

- Because this was a bench trial, the Court assumes that the trial judge under- stood that the testimony was not admissible to prove the truth of the matter asserted. It is also unlikely that the judge took the testimony as providing chain-of-custody evidence. The record does not support such an understanding; no trial judge is likely to be so confused; and the admissible evidence left little room for argument that Cellmark's sample came from any source but L. J.'s swabs, since the profile matched the very man she identified in a lineup and at trial as

Williams v. Illinois (Alito, joined by C.J. Roberts and Kennedy and Breyer)

- Cellmark's report did not need to be introduced in order to show that Cellmark's profile was based on the semen in L. J.'s swabs or that its procedures were reliable.
- If there were no proof that Cellmark's profile was accurate, Lambatos' testimony would be irrelevant, but not a Confrontation violation.
- The State offered conventional chain-of-custody evidence, and the match between Cellmark's profile and petitioner's was telling confirmation that Cellmark's profile was deduced from the semen on L. J.'s swabs. The match also provided strong circumstantial evidence about the reliability of Cellmark's work.

Williams v. Illinois (Alito, joined by C.J. Roberts and Kennedy and Breyer)

- Even if Cellmark's report had been introduced for its truth, there would have been no Confrontation Clause violation. The Clause refers to testimony by "witnesses against" an accused, prohibiting modern-day practices that are tantamount to the abuses that gave rise to the confrontation right, namely, (a) out-of-court statements having the primary purpose of accusing a targeted individual of engaging in criminal conduct, and (b) formalized statements such as affidavits, depositions, prior testimony, or confessions.
- Cellmark report's primary purpose was to catch a dangerous rapist who was still at large, not to obtain evidence for use against petitioner, who was neither in custody nor under suspicion at that time. Nor could anyone at Cellmark possibly know that the profile would inculpate petitioner.

Williams v. Illinois (Thomas concurring)

- No plausible reason for admitting Cellmark's statements other than to prove the truth.
- Cellmark's report is not a statement by a witness under the Confrontation Clause. It lacks the solemnity of an affidavit or deposition, for it is neither a sworn nor a certified declaration of fact. And, although it was produced at the request of law enforcement, it was not the product of formalized dialogue resembling custodial interrogation.

Williams v. Illinois (Breyer concurring)

- This case raises a question that I believe neither the plurality nor the dissent answers adequately: How does the Confrontation Clause apply to the panoply of crime laboratory reports and underlying technical statements written by (or otherwise made by) laboratory technicians? In this context, what, if any, are the outer limits of the "testimonial statements" rule set forth in Crawford v. Washington, 541 U. S. 36 (2004)? Because I believe the question difficult, important, and not squarely addressed either today or in our earlier opinions, and because I believe additional briefing would help us find a proper, generally applicable answer, I would set this case for reargument. In the absence of doing so, I adhere to the dissenting views set forth in Melendez-Diaz v. Massachu- setts, 557 U. S. 305 (2009), and Bullcoming v. New Mexico, 564 U. S. ___ (2011). I also join the plurality's opinion."

Williams v. Illinois (Kagan, joined by Scalia, Ginsburg, & Sotomayor dissenting)

- "Under our Confrontation Clause precedents, this is an open-and-shut case. The State of Illinois prosecuted Sandy Williams for rape based in part on a DNA profile created in Cellmark's laboratory. Yet the State did not give Williams a chance to question the analyst who produced that evidence."
- 5 Justices reject the Alito reasoning
- "Viewed side-by-side with the Bullcoming report, the Cellmark analysis has a comparable title; similarly describes the relevant samples, test methodology, and results; and likewise includes the signatures of laboratory officials."
- "Lambatos's statements about Cellmark's report went to its truth, and the State could not rely on her status as an expert to circumvent the Confrontation Clause's requirements."

Jenkins v United States
75 A.3d 174 (D.C. App. 2013)

- Jenkins convicted of first-degree murder while armed and other crimes arising from stabbing
- DNA expert testified but the laboratory analysts who performed the serological and DNA lab work did not
- Court finds *Williams* unhelpful and decides to apply pre-*Williams* law
- Held: Confrontation violation

Jenkins v United States (cont)

- Dr. Baechtel managed DNA analysis in FBI lab
- Did not perform the tests himself
- Assisted by biologists and technicians
- Works with a team
- Technicians describe what they see, what size the stain is, what portion is takenfor analysis and then a biologist(s) do the typing, print out the data and giveit Baechtel for decision

Jenkins v United States (dissent)

- "Five Justices of the Supreme Court would agree that DNA testimony by an expert who did not perform or witness the underlying laboratory work is *not* testimonial hearsay where the underlying laboratory report lacks the formality of an affidavit *and* where the laboratory findings were made before the defendant became a suspect (such that it cannot be said that the primary purpose of the laboratory analysis was to obtain evidence for use against the defendant at his criminal trial)."

Burch v State
401 S.W. 3d 634 (Tex. Crim. App. 2013)

- Possession with intent to deliver cocaine case
- Witness's report was admitted
- "Without having the testimony of the analyst who actually performed the tests, or at least one who observed their execution, the defendant has no way to explore the types of corruption and missteps the Confrontation Clause was designed to protect against." Would not be sufficient if lab had all analysts sign every report.

Burch v State 2 Separate Concurring In Judgement Opinions (4 Justices) Quote from One (2 Justices)

- I would suggest a broader reading of *Bullcoming*—one that might allow, for example, a second analyst, with an independent analysis, opinion, or judgment, to testify to results of laboratory testing depending on the circumstances of the analysis and the definition of "analyst" or "reviewer." If the State can produce "another" who may have developed his or her own separate conclusion based on data supplied through testing (i.e., particular "testing" is really performed through machinery and analysts develop opinions from that data), I see no reason why that witness should be denied an opportunity to testify.